

Application No.: 10/579,659
Filing Date: May 11, 2007

REMARKS

Claims 1-13 and 15-20 are pending. Claim 19 has been amended to a correct minor typographical error. Support for the amendments can be found throughout the specification and in the original claims as filed. No new matter has been added. Claims 1-13 and 15-20 are presented for examination.

The Claims are Novel under 35 U.S.C. § 102 in view of French Patent No. 2,788,796

Claims 1, 2, 5-9, and 15-20 were rejected under 35 U.S.C. §102(b) as being anticipated by French Patent No. 2,788,796 to Pomero. Applicant respectfully traverses. Applicant respectfully submits that, as stated in the M.P.E.P. at § 2131, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987). Further, the elements must be “arranged and combined as required by the claim.” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359 (Fed. Cir. 2008). Applicant respectfully submits that Pomero does not anticipate the identified claims for at least the reasons discussed below.

Claim 1

Claim 1 recites that “said structure positioning member and said first and second joining members define an opening for receiving at least said portion of the structure[.]” One embodiment of these features is illustrated in Figure 2 of the application, reproduced below:

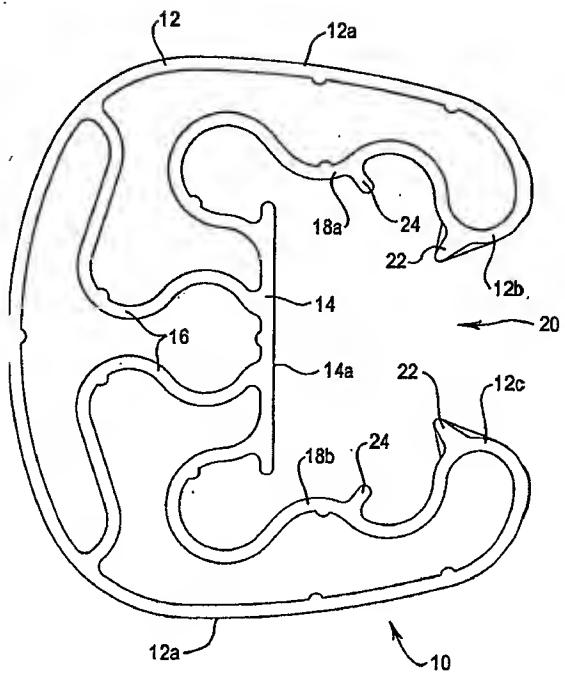


FIG 2

As described in Paragraph [0032] of the present application, “[a]s shown in FIG. 2, the first and second joining members 18a, 18b, and the structure positioning member 14 define an opening 20 in which the structural support 100 can be received.” Applicant respectfully submits that the identified features are not taught or suggested by Pomero.

Pomero teaches an impact barrier. Figure 2 of Pomero is reproduced below:

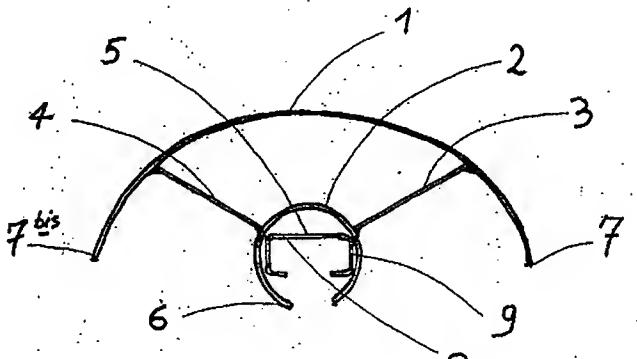


fig. 2

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With respect to Pomero, the Office Action alleges that “Pomero discloses a protecting apparatus comprising a bumper member (1), a structure positioning member (2), joining members (6) defining an opening, and resilient flexible members (3, 4).” Applicants have obtained a machine translation of the Pomero reference which is provided herewith. According to the translation, feature 2 is a cylinder for receiving feature 5, the support. Pomero Translation, abstract. Feature 6 is an opening in the cylinder 2. Id. The Office Action states that “joining members (6) defin[e] an opening[,]” suggesting that feature 6 of Pomero meets the joining member limitation. As noted above, feature 6 of Pomero is a gap in the cylinder 2. The Examiner appears to use the designation 6 as referring to the arms of the central feature of Pomero that wrap around the rail 5. Applicant respectfully submits that these arms do not meet the limitation of the recited joining members because these arms do not join respective ends of the structure positioning member and the bumper member. The arms 6 of Pomero are solely part of a structure positioning member, they do not join anything. While the spacers 3 and 4 function as joining members, these spacers 3 and 4 do not meet the limitation regarding defining an opening for receiving the structure.

As illustrated in Figure 2 of Pomero, the opening for the support 5 is defined or bounded solely by the cylinder 2. The spacers 3 and 4 do not form sidewalls or form a part of the boundaries of the opening. Rather, the spacers 3 and 4 position the cylinder 2 with respect to screen 7. This is distinct from the structure described in the present application and recited in Claim 1. As shown above in figure 2 of the present application, the joining members 18a and 18b form sidewalls or boundaries of the opening 20. Thus, the joining members define or set forth the perimeter of the opening 20. The spacers 3 and 4 of Pomero do not form or define an opening. Figure 4 of Pomero is similar to Figure 2. A central cylinder with a gap therein defines an opening 17 for receiving a structure. Spacers 16 are provided which join the central cylinder to the outside screen 15. However, as with figure 2, the spacers 16 do not form side walls or otherwise set forth the boundaries of the opening 17. Rather, the spacers 16 position the cylinder which defines the opening 17. For at least these reasons, Applicant respectfully submits that the spacers 3, 4, and 16 do not meet the limitations discussed above with respect to the joining

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members. For at least this reason, Applicant respectfully submits that Claim 1 is not anticipated by Pomero.

In addition, Claim 1 recites “at least one resiliently flexible joining portion extending between said bumper member and said structure positioning member arranged so that when an outer surface of the bumper member is impacted said impact force is dissipated at least in part by flexure of said at least one joining portion.” With respect to Figure 2, illustrated above, paragraph [0032] of the specification of the present application identifies features 16a and 16b as and embodiment of the flexible joining portions. Applicant respectfully submits that these features are not taught or suggested by Pomero. The Office Action identifies features 3 and 4 of Pomero as resilient flexible members. However, as indicated in the translation of Pomero, the supports of Pomero are intended to permanently deform, or be crushed, in response to impact. Pomero Translation, page 2. These crushable spacers do not meet the identified limitation. For at least this additional reason, Applicant respectfully submits that Claim 1 not anticipated by Pomero.

The other pending claims are each dependent from independent Claim 1 discussed above. Applicant respectfully submits that they are patentable for at least the reasons discussed above with respect to Claim 1.

Claims 3 and 4 are Patentably Non-Obvious under 35 USC § 103 in view of French Patent No. 2,788,796

Claims 3 and 4 were rejected under 35 U.S.C. §103(a) as being obvious in view of Pomero. Applicant respectfully submits that, as stated in the M.P.E.P. at § 2143, “The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art.” *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1395. As noted above, Applicant respectfully submits that Pomero does not teach each limitation of independent Claim 1. As Claims 3 and 4 are dependent from Claim 1, Applicant respectfully submits that Claims 3 and 4 are allowable for at

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least the same reasons discussed above. However, in addition, Applicant notes that the claimed shapes of the joining portions have advantageous features as described in the specification. In particular, “[a] tortuous path is adopted so as to better enable the joining portion 16 to accommodate impact forces.” This advantageous feature is neither taught nor suggested by the cited reference. For at least these additional reasons, Applicant respectfully submits that Claims 3 and 4 are patentable over the cited references.

Regarding Claims 11-13

Applicant gratefully acknowledges that Claims 11-13 would be patentable if rewritten in independent form.

CONCLUSION

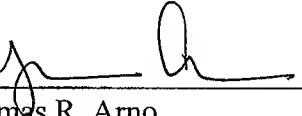
In view of the above amendments and remarks, Applicants respectfully maintain that the claims are patentable and request that they be passed to issue. Applicants invite the Examiner to call the undersigned if any remaining issues may be resolved by telephone.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 2/24/10

By: 

Thomas R. Arno
Registration No. 40,490
Attorney of Record
Customer No. 20995
(619) 235-8550

8603941
022310